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09/634,474	08/08/2000	Hugh C. Gardner	34,040.02	4456

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 07/08/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

MF-3

**Office Action Summary**

Applicati n No.

09/634,474

Applicant(s)

GARDNER ET AL.

Examiner

Cheryl Juska

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,8-10,15,16,18,20,22,26,27,31,32,35,36,38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) 1-3,8-10,26,27,31,32,35,36,38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15,16,18,20 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Preliminary Amendment A, submitted as Paper No. 2 on August 8, 2000, has been entered. The specification has been amended as requested. Claims 4-7, 11-13, 17, 19, 21, 23-25, 28-30, 33, 34, and 37 have been cancelled. Thus, the pending claims are 1-3, 8-10, 14-16, 18, 20, 22, 26, 27, 31, 32, 35, 36, 38, and 39.

### ***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1-3 and 8-10, drawn to a tufted carpet, classified in class 428, subclass 95.
  - II. Claims 15, 16, 18, 20, and 22, drawn to a carpet backing fabric, classified in class 442, subclass 268+.
  - III. Claims 26, 27, 31, 32, 35, 36, 38, and 39, drawn to a process for making tufted carpet, classified in class 156, subclass 72.

Note claim 14 is not grouped with the other claims in that it depends from cancelled claim 13.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions of Group II and Group I are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd

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paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a geotextile or reinforcing fabric and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Inventions Group III and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made with an adhesive film rather than an adhesive fabric.

5. Inventions of Group II and Group III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the adhesive fabric of Group II can be employed to laminate fabrics other than carpeting.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Stephen Hensley on June 5, 2002, a provisional election was made with traverse to prosecute the invention of Group II, claims 15, 16, 18, 20, and 22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-3, 8-10, 26, 27, 31, 32, 35, 36, 38, and 39 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Specification***

9. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

### ***Claim Rejections - 35 USC § 112***

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 15, 16, 18, 20, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite for the use of the preamble phrase “an improved carpet backing.” How is said backing improved? What is the improvement in comparison to?

### ***Claim Objections***

12. Claims 16, 18, 20, and 22 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claims, or amend the claims to place the claims in proper dependent form, or rewrite the claims in independent form. Claim 16 depends from claim 14, which depends from cancelled claim 13. Additionally, it is noted that claim 14 is drawn to a tufted carpet while claim 16 is drawn to a carpet backing. Thus, claim 16 will be examined as if dependent upon claim 15 drawn to a carpet backing. Similarly, claim 18 depends from one of claims 14-17. In addition to the problems with claim 14, claim 17 is a cancelled claim. Claim 18 will be examined as if dependent upon either of claims 15 and 16.

13. Claims 20 and 22 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim (i.e., claim 18 and claims 18 and 20, respectively). See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 102***

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 15, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,053,668 issued to Kimmel et al.

Applicant claims a carpet backing comprising a nonwoven adhesive fabric needled or thermally bonded to a woven support fabric, wherein both said nonwoven and woven fabric are of a thermoplastic material.

Kimmel discloses a primary backing comprising a woven synthetic scrim and a layer of staple fibers needled thereto (abstract). The woven scrim is preferably made of polypropylene, while the staple fibers are preferably nylon, both of which are thermoplastic materials. Therefore, claims 15, 16, and 18 are rejected as being anticipated by the cited Kimmel patent.

### ***Conclusion***


16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
June 30, 2002